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Attorneys for Public Entities Impacted by the Wildfires

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA**

In re

PG&E CORPORATION,

and

PACIFIC GAS AND ELECTRIC  
COMPANY,

Debtors.

Case No. 19-30088-DM

Chapter 11  
Lead Case, Jointly Administered

**MOTION OF PUBLIC ENTITIES FOR  
APPOINTMENT OF OFFICIAL  
COMMITTEE OF PUBLIC ENTITIES  
PURSUANT TO 11 U.S.C. §§ 1102(a)(2)  
and 105(a)**

- ☐ Affects PG&E Corporation  
☐ Affects Pacific Gas and Electric Company  
☒ Affects both Debtors

\*All papers shall be filed in the Lead Case,  
No. 19-30088-DM.

Hearing on Shortened Time:

Date: March 13, 2019  
Time: 9:30 a.m. (Pacific Time)  
Place: 450 Golden Gate Avenue, Ctrm 17  
San Francisco, CA 94102  
Judge: Hon. Dennis Montali

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1 The Public Entities<sup>1</sup> hereby submit this Motion of Public Entities for Appointment of  
2 Official Committee of Public Entities Pursuant to 11 U.S.C. §§ 1102(a)(2) and 105(a) (the  
3 “**Motion**”), seeking the prompt formation of an official committee of Public Entities (a “**Public**  
4 **Entities Committee**”) pursuant to 11 U.S.C. §§ 1102(a)(2) and 105(a). The Public Entities also  
5 request the appointment of the Public Entities to the Public Entities Committee and such other  
6 related relief as the Court may deem appropriate.

7 The Motion is supported by the points and authorities set forth below, the concurrently-  
8 filed notice and supporting declaration of Sander L. Esserman (“**Esserman Declaration**”), and  
9 all other pleadings and documents on file in this matter.

10 **I.**  
11 **INTRODUCTION**

12 The Public Entities are the representative governmental bodies of communities that were  
13 devastated by the 2017 Northern California Wildfires<sup>2</sup> and the 2018 Camp Fire<sup>3</sup> (collectively,  
14 the “**Wildfires**”). The Public Entities’ tort claims against the Debtors arising out of the Wildfires  
15 (the “**PE Wildfire Claims**”) are different, not only from the claims of individual tort claimants,  
16 but also from the claims of other governmental units who hold priority tax claims and other  
17 claims more traditionally asserted by governmental units. Indeed, there have been few (if any)

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18 <sup>1</sup> The Public Entities consist of the following California public entities: (a) Calaveras County Water  
19 District, (b) Napa County, (c) City of Napa, (d) Mendocino County, (e) Lake County, (f) City of  
20 Clearlake, (g) Nevada County, (h) Yuba County, (i) City of Santa Rosa, (j) Sonoma County, (k) Sonoma  
21 County Agricultural Preservation and Open Space District, (l) Sonoma County Community Development  
22 Commission, (m) Sonoma County Water Agency, (n) Sonoma County Sanitation District, (o) Town of  
23 Paradise, and (p) Butte County. Notably, not all of the public entities with claims against the Debtors  
24 arising out of the Wildfires are represented or have even made an appearance in these bankruptcies  
25 yet. There could be other public entities that would want to serve on a Public Entities Committee.

26 <sup>2</sup> The 2017 Northern California Wildfires began on October 8, 2017 when multiple wildfires spread  
27 through Northern California, including Napa, Sonoma, Butte, Humboldt, Mendocino, Del Norte, Lake,  
28 Nevada and Yuba Counties, as well as the area surrounding Yuba City. The Debtors acknowledge that  
the 2017 Northern California Wildfires consumed 245,000 acres of land, resulting in at least 44 fatalities  
and the destruction of an estimated 8,900 structures. *See* Declaration of Jason P. Wells in Support of First  
Day Motions and Related Relief, Dkt. No. 27 at p. 12-13.

<sup>3</sup> The 2018 Camp Fire began on November 8, 2018 near the city of Paradise, Butte County, California.  
The Debtors acknowledge that the 2018 Camp Fire consumed 153,336 acres of land, resulting in at least  
86 facilities and the destruction of 13,972 residences, 528 commercial structures and 4,293 other  
buildings. *See id.* at p. 11-12.

1 bankruptcy cases where governmental units have been impacted in the manner or to the degree  
2 as the Public Entities have been impacted here. The PE Wildfire Claims are, therefore, truly  
3 unique, and must be treated separately from the claims of other creditors in this bankruptcy.

4 Because of their unique interests and claims, the Public Entities have requested that the  
5 United States Trustee (the “*Trustee*”) form an official committee comprised solely of the Public  
6 Entities with respect to the PE Wildfire Claims. Such a committee would represent the Public  
7 Entities solely with respect to the PE Wildfire Claims and not any other claims that the Public  
8 Entities may assert in these bankruptcy cases, such as tax claims or other priority claims more  
9 typical of claims by governmental units. The Trustee has not contested the need for a Public  
10 Entities Committee. Instead, the Trustee has stated that “[a]lthough we do not reject or contest  
11 the reasons you set forth in favor of the appointment of a Public Entities Committee, we have  
12 concluded that appointment of such a committee would be outside the United States Trustee’s  
13 statutory authority.” Esserman Declaration, ¶ 8 and Exhibit C. More specifically, the Trustee  
14 interprets 11 U.S.C. § 1102(b) to provide that only “persons” may serve on an official committee,  
15 and that the Public Entities do not fall under the definition of “persons” under the Bankruptcy  
16 Code.

17 The issue raised by the Trustee is one of first impression for this Circuit. The Public  
18 Entities assert that the United States Trustee’s interpretation of Section 1102(b) is overly  
19 constrictive and is inconsistent with the decisions of other courts who have recognized their  
20 authority to order the formation of an official committee comprised of governmental units.

21 The necessity of a Public Entities Committee cannot be overstated. The substantial  
22 amount of the PE Wildfire Claims (such aggregate amount could be in excess of \$2.5 billion),  
23 the unique nature of those claims, and the importance of the claims to communities affected by  
24 the Wildfires mandate that the Public Entities have official committee representation in order to  
25 assure adequate representation of the Public Entities and their constituencies. The Public Entities  
26 have not been appointed to serve on either of the two existing committees formed by the Trustee:

27  
28

1 the Official Committee of Unsecured Creditors (the “*UCC*”)<sup>4</sup> and the Official Committee of Tort  
2 Claimants (the “*Tort Committee*”).<sup>5</sup> It is, therefore, imperative that this Court order the  
3 formation of a Public Entities Committee.

4 An official Public Entities Committee can (and should) serve a unique and significant  
5 role in the Debtors’ bankruptcy. Unlike the creditors represented by the UCC and the Tort  
6 Committee, the Public Entities cannot limit their concerns in these bankruptcies to simply  
7 recovery of their damages. The Public Entities owe a duty to their respective constituencies to  
8 ensure that the Debtors do not compromise safety, reporting, regulatory or other matters affecting  
9 the future health and welfare of the Public Entities’ communities in order to confirm a plan of  
10 reorganization. A separate Public Entity Committee can protect these interests in ways that the  
11 UCC or Tort Committee cannot. It would also allow them to more efficiently play their  
12 necessary role in the Debtors’ the proceedings going forward.

13 For these reasons, as will be set forth in more detail below, the Public Entities ask that  
14 the Court order the Trustee to form a Public Entities Committee.

## 15 **II.** 16 **JURISDICTION**

17 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334,  
18 the Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges, General Order 24  
19 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District  
20 Court for the Northern District of California (the “*Bankruptcy Local Rules*”). This is a core  
21 proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28  
22 U.S.C. §§ 1408 and 1409.

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25 <sup>4</sup> On February 12, 2019, the Trustee formed the UCC. The Public Entities did not apply to be appointed  
26 to the committee and no Public Entities were appointed to the committee. [Dkt. No. 409]

27 <sup>5</sup> On February 15, 2019, the Trustee formed the Tort Committee. The Public Entities did not apply to be  
28 appointed to the committee and no Public Entities were appointed to the committee. [Dkt. No. 453]

### **III.** **BACKGROUND**

Each of the Public Entities suffered, to varying degrees, damages to one or more of the following public services: roads, bridges, sidewalks, culverts, drains, storm and water systems (both damage to and contamination of such systems), traffic lights, stop signs, public landscaping, art, lost capacities in reservoirs, water storage and landfills. In addition, dead or dying trees, soil erosion, debris flows, flooding, and mudslides that resulted from the wildfires are a threat to the public welfare and safety of the communities represented by the Public Entities. In the face of this massive destruction, the Public Entities' damages have been compounded by (1) loss of revenue from property, sales, and other taxes, (2) loss of revenue-generating assets and services, (3) increased costs from workers' compensation claims and overtime, (4) increased use and need of law enforcement, emergency response personnel, and other public safety services, and (5) other factors. The Public Entities' claims are unique and unlike the claims represented by a UCC or generalized Tort Committee. The Public Entities do not seek recovery on behalf of individuals or businesses affected by the wildfires. Instead, the Public Entities' interests encompass the very fabric of their constituent communities. The PE Wildfire Claims are vital to the health and welfare of their respective communities and can only be brought by the Public Entities.

On January 30, 2019, the Public Entities delivered a letter to the Trustee requesting that the Trustee appoint an official committee of Public Entities. Esserman Declaration, ¶ 4 and Exhibit A. The Public Entities supplemented their January 30, 2019 letter to the Trustee with a February 6, 2019 letter that highlighted the unique and particularized nature of the Public Entities' claims, described the difficulties the Public Entities would have serving on a more generalized committee, and again requested formation of a Public Entities official committee. Esserman Declaration, ¶ 5 and Exhibit B.

On February 14, 2019, counsel for the Public Entities spoke with the Trustee regarding the Public Entities' request for a separate official committee. During the conversation, the Trustee indicated that the Public Entities' request for an official committee was still being



1 considered, and that he would not appoint a Public Entity to the Tort Committee because they  
2 were excluded from the definition of “person” in the Bankruptcy Code. Esserman Declaration,  
3 ¶ 6. On February 19, 2019, counsel for the Public Entities received an email correspondence  
4 from the Trustee’s office stating that the Public Entities’ request for a separate official committee  
5 was still being considered. Esserman Declaration, ¶ 7.

6 On February 20, 2019, the Trustee’s office provided notice to the Public Entities, through  
7 their counsel, stating that the Trustee would not form a Public Entities Committee, because the  
8 Trustee concluded that he lacked statutory authority to form such a committee. Esserman  
9 Declaration, ¶ 8. More specifically, the Trustee stated as follows:

10 Although we do not reject or contest the reasons you set forth in favor of  
11 the appointment of a Public Entities Committee, we have concluded that  
12 appointment of such a committee would be outside the United States Trustee’s  
13 statutory authority. Specifically, the public entities noted in your letter are not  
14 eligible to serve on a committee under the definition of “person” found in 11  
15 U.S.C. § 101(41).

16 11 U.S.C. § 1102(b) governs committee appointments and composition.  
17 Section 1102(b)(1) requires that the United States Trustee appoint “persons” to  
18 serve on official committees. Under 11 U.S.C. § 101(41), “[t]he term ‘person  
19 includes individual, partnership, and corporation, but does not include  
20 governmental unit . . .” 11 U.S.C. § 101(41).

21 Esserman Declaration, Exhibit C.

22 The Public Entities assert that the Trustee’s interpretation of 11 U.S.C. § 1102(b) is  
23 overly constrictive and inconsistent with decisions of other courts recognizing the authority of  
24 bankruptcy courts to order the formation of a committee of governmental units. Therefore, the  
25 Public Entities seek an order of this Court for the formation of a separate official committee of  
26 Public Entities.

27 //

28 //

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IV.  
**BASIS FOR RELIEF REQUESTED**

**A. The Court should order the formation of a Public Entities Committee pursuant to 11 U.S.C. §§ 1102(a)(2) and pursuant to the Court's authority under 11 U.S.C. § 105.**

Pursuant to 11 U.S.C. § 1102(a)(2), “[o]n request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary, to assure adequate representation of creditors or of equity security holders.” Section 1102(b) addresses the composition of any such committee of creditors as follows:

(b)(1) A committee of creditors appointed under subsection (a) of this section ***shall ordinarily consist*** of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organized by creditors before the commencement of the case under this chapter, if such committee was fairly chosen and is representative of the different kinds of claims to be represented.

11 U.S.C. § 1102(b) (emphasis supplied).

The Trustee has not contested the Public Entities’ grounds for formation of a Public Entities Committee in these bankruptcy cases. Instead, the Trustee incorrectly interprets 11 U.S.C. § 1102(b) to prohibit any creditors other than “persons” from serving on a committee. However, the plain language of 11 U.S.C. § 1102(b) provides for no such prohibition. Section 1102(b) only provides an example of what a committee of creditors shall ***ordinarily*** consist of. A committee will ordinarily not consist of governmental units, because in most bankruptcy cases those creditors hold liquidated priority claims that may also be secured, such as tax claims, which do not require committee representation. However, as noted above, this is no ordinary bankruptcy and the PE Wildfire Claims are no ordinary claims. The PE Wildfire Claims (which could exceed \$2.5 billion) arise in tort, are unliquidated and unsecured, and will raise unique issues of valuation and treatment under any plan of reorganization proposed by the Debtors. As discussed in depth below, these factors mandate separate committee representation for the Public Entities.

At least two other courts have interpreted 11 U.S.C. § 1102(b) to permit the formation of an official committee comprised of governmental units.<sup>6</sup> In *In re Lion Capital Group*, 44 B.R. 684 (Bankr. S.D.N.Y. 1984), the bankruptcy court heard a motion by the Greenburg Central School District No. 7, requesting the formation of a special committee of creditors pursuant to Section 1102(a)(2). The court held that “the municipalities and school districts claimants in this case could so serve because, *inter alia*, the provision of § 1102(b)(1) that only ‘persons’ could ‘ordinarily’ serve on a committee was not an absolute bar and because the claims of municipalities and school districts were not tax claims entitled to priority.” *In re Lion Capital Group*, 44 B.R. at 685. The court later ordered the formation of an official special committee to which the acting United States Trustee appointed only governmental units. Notably, as recognized by the court, the claims of the governmental units in *Lion Capital* were not for priority claims traditionally asserted by governmental units but were instead related to the sale of United States Treasury obligations most, if not all, of which were subject to pre-petition open repurchase transactions between the debtor and the governmental units. *Id.* at 685.

Similarly, in *In re Gates Engineering Co., Inc.*, 104 B.R. 653 (Bankr. Del. 1989), the State of Tennessee asked the court to permit governmental units to serve on a Warranty Claims Committee formed in that bankruptcy case and, in the alternative, the formation of a separate governmental entities committee. The court recognized that, because of the nature of Tennessee’s claims, it was not functioning as a governmental unit when asserting those claims, but instead had the same interests as other members of the Warranty Claims Committee. However, the court determined that it did not have authority over the composition of committees

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<sup>6</sup> In *In re Am. Atomics Corp.*, 2 B.R. 526 (Bankr. D. Ariz. 1980), *In re Baldwin-United Corp.*, 38 B.R. 802 (S.D. Ohio 1984), and *In re Mansfield Tire & Rubber Co.*, 39 B.R. 974 (N.D. Ohio 1983), the courts ruled that governmental units could not serve on an unsecured creditors committee because the governmental units were not “persons” as defined by the Bankruptcy Code. However, these cases are not binding on this Court. Furthermore, they are distinguishable from the case at bar, because the Public Entities are not seeking to serve on the UCC but are instead requesting a separate Public Entities Committee comprised solely of the Public Entities.

...Continued

1 appointed by the U.S. Trustee,<sup>7</sup> and therefore, could not dictate to the Trustee who was to serve  
2 on the Warranty Claims Committee. The court then turned to Tennessee's request for alternative  
3 relief. The court determined that it had authority to order the formation of a governmental unit  
4 committee, stating "[t]he alternative request for a governmental entities committee is one upon  
5 which the court has authority to act under § 1102(b)(2).<sup>8</sup> While the *Gates Engineering* court did  
6 not find that such a committee of governmental units was warranted under the circumstances of  
7 that case, it clearly recognized the authority of bankruptcy courts to form such committees.

8 Here, as in *Lion Capital*, the Public Entities claims are not the types of claims  
9 traditionally brought by governmental units in bankruptcies and the need for committee  
10 representation for the Public Entities is paramount.

11 Even if Section 1102(b) does not provide explicit authority for this Court to order the  
12 formation of a Public Entities committee (which, the Public Entities contend that it does), this  
13 Court may, and should, exercise its authority under 11 U.S.C. § 105(a) to order the formation of  
14 a Public Entities Committee. Section 105(a) gives the bankruptcy courts the power to issue  
15 orders it deems appropriate to carry out the provisions in Title 11.<sup>9</sup> *In re Mercury Finance Co.*,  
16 240 B.R. 270, 277 (N.D. Ill. 1999) (citing *In re K.P. Enterprise*, 135 B.R. 174, 186 (Bankr. D.  
17 Me. 1992). "This authority 'exceeds the equitable authority available under 'tradition equity  
18 jurisprudence.'" *In re City of Detroit, Mich.*, 519 B.R. 673, 679 (Bankr. E.D. Mich. 2014)  
19 (quoting *In re Mehlhose*, 469 B.R. 694, 710 (Bankr. E.D. Mich. 2012)). These broad equitable

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20  
21 <sup>7</sup> In 2005, Congress restored the explicit statutory authority of bankruptcy courts to order changes to the  
22 membership of creditors' committees with the inclusion of 11 U.S.C. § 1102(a)(4). *In re ShoreBank Corp.*, 467 B.R. 156, 160 (Bankr. N.D. Ill. 2012).

23 <sup>8</sup> The court's reference to the Bankruptcy Code, Section 1102(b)(2) appears to be a typographical error.  
24 Section 1102(b)(2) pertains to the composition of a committee of equity security holders. The court's  
reference should have been to 11 U.S.C. § 1102(a)(2), which pertains to the appointment of additional  
committees.

25 <sup>9</sup> More specifically, 11 U.S.C. § 105(a) provides that "[t]he court may issue any order, process, or  
26 judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this  
27 title providing for the raising of an issue by a party in interest shall be construed to preclude the court  
from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or  
implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a).

1 powers are, however, constrained to actions or determinations that are not inconsistent with the  
2 Bankruptcy Code. *City of Detroit, Mich.* at 680 (*citing ADT Corp. v. Advantage Pkg. Inc. (In re*  
3 *ADT Corp.)*, 352 F.3d 1062, 1066 (6<sup>th</sup> Cir. 2003)).

4 Here, formation of a Public Entities Committee is not inconsistent with the Bankruptcy  
5 Code. Nowhere does the Bankruptcy Code expressly prohibit this Court from ordering the  
6 formation of a separate committee for the Public Entities. The Public Entities must have a unified  
7 voice and the Debtors must have one point of contact when dealing with the Public Entities, not  
8 only for resolution of the PE Wildfire Claims, but also any regulatory or legislative relief for  
9 which the Debtors may require the support or acquiescence of the Public Entities. To preclude  
10 committee representation to the Public Entities under such circumstances cannot have been the  
11 intent of Congress when drafting 11 U.S.C. § 1102(b).

12 Indeed, the 1994 amendment to 11 U.S.C. § 101(41)’s definition of “person” to include  
13 certain governmental units for purposes of Section 1102 evidences Congress’ acknowledgment  
14 that there should not be an absolute bar of committee representation for governmental units.<sup>10</sup>  
15 While, the 1994 amendment to the definition of “person” does not expressly contemplate the PE

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16 <sup>10</sup> In 1994, Congress amended the Bankruptcy Code to include the following types of governmental  
17 units within the definition of “person” for purposes of Section 1102 as follows:

18 . . . a governmental unit that—

19 (A) acquires an asset from a person—

20 (i) as a result of the operation of a loan guarantee agreement; or

21 (ii) as receiver or liquidating agent of a person;

22 (B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an  
23 affiliate of the debtor; or

24 (C) is the legal or beneficial owner of an asset of—

25 (i) an employee pension benefit plan that is a governmental plan, as defined in  
section 414(d) of the Internal Revenue Code of 1986; or

26 (ii) an eligible deferred compensation plan, as defined in section 457(b) of the  
27 Internal Revenue Code of 1986;

28 shall be considered, for purposes of section 1102 of this title, to be a person with respect to such  
asset or such benefit.

Wildfire Claims, neither Congress nor anyone else could have foreseen the mass devastation that has given rise to the PE Wildfire Claims. Without an express prohibition in the Bankruptcy Code against governmental units serving on a committee in the Bankruptcy Code, Congress' identification of certain types of claims that may *ordinarily* permit a governmental unit to serve on a general creditors committee should not be interpreted to bar the formation of a separate Public Entities Committee where, as here, the circumstances demand it. *See In re City of Detroit, Mich.*, 519 B.R. 673, 680 (Bankr. E.D. Mich. 2014) (holding that vacating the appointment of a committee is not inconsistent with the bankruptcy code where the bankruptcy code does not explicitly prohibit the bankruptcy court from doing so); *In re Pierce*, 237 B.R. 748, 753-54 (Bankr. E.D. Cal. 1999) (holding that section 105 could be utilized by bankruptcy courts to review the United States Trustee's committee appointment prior to the addition of Section 1102(a)(4) to the Bankruptcy Code, where "the court does not believe that Congress intended to grant the UST wholly unfettered discretion in appointing committee members"). Where, as here, the governing authority (i.e., 11 U.S.C. § 1102(b)) does not expressly prohibit this Court from taking action, the Court may use its powers under 11 U.S.C. § 105(a) to take such action if the Court, exercising its discretion, determines that doing so is necessary or appropriate to carry out the provisions of title 11.

**B. Formation of a Public Entities Committee is necessary and proper to provide the Public Entities with adequate representation in these bankruptcy cases.**

The Public Entities need committee representation in order to be adequately represented in these bankruptcy proceedings. Bankruptcy Code, Section 1102(a) "affords no test of adequate representation leaving the bankruptcy courts with discretion to examine the facts of each case to determine if additional committees are warranted." *In re Mansfield Ferrous Castings, Inc.*, 96 B.R. 779, 781 (Bankr. N.D. Ohio 1988) (citing *In re Beker Indus. Corp.*, 55 B.R. 945, 948 (Bankr. S.D.N.Y. 1985) and *In re Johns-Manville Corp.* 68 B.R. 155 (S.D.N.Y. 1986)). "In deciding whether appointment of additional creditors' committee is necessary to ensure adequate representation, courts have considered many and diverse factors, including (1) ability of existing committee to function; (2) nature of Chapter 11 case; (3) standing and desires

of the various constituencies; (4) ability of creditors to participate in case without an additional committee; (5) delay and additional cost that would result if appointment were granted; (6) tasks that the separate committee would perform; and (7) other factors relevant to adequate representation issue.” *In re Budd Co., Inc.*, 512 B.R. 910, 912-13 (Bankr. N.D. Ill. 2014) (*citing In re Residential Capital, LLC*, 480 B.R. 550 (Bankr. S.D.N.Y. 2012)). No one factor is dispositive, and the amount of due consideration given to each depends on the circumstances of the particular chapter 11 case. *In re Budd*, 512 B.R. at 913. As discussed below, application of these factors dictates that a separate Public Entities Committee be formed in these bankruptcy cases for purposes of adequately representing the interests of the Public Entities.

***1. The unique interests of the Public Entities require formation of a separate Public Entities Committee***

The PE Wildfire Claims are unique and differ substantially from the claims of other creditors in these bankruptcy cases. While the general unsecured creditors and the tort claimants seek damages owed to them as individuals or entities related to contract claims, vendor debt, personal injury, property damage, and related claims, the Public Entities have suffered damages more public in nature, such as infrastructure damages, fire suppression costs, debris cleanup, and loss of tax revenue. The unique nature of the PE Wildfire Claims has consistently been recognized by the Debtors as requiring that those claims be treated separately and distinctly from other claims against the Debtors.

From the first day of these bankruptcy cases, the Debtors have recognized that the PE Wildfire Claims are separate and distinct from other wildfire claims, let alone general unsecured claims or non-wildfire related tort claims.<sup>11</sup> This separate treatment of the Public Entities’ claims in these bankruptcy cases is consistent with how the PE Wildfire Claims were dealt with in the tort system. In the pre-petition wildfire litigation, the Superior Court of California, County of San Francisco identified four distinct classes of wildfire claimants and recognized the need to

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<sup>11</sup> See Declaration of Jason P. Wells in Support of First Day Motions and Related Relief, Bankr. N.D. Cal. Docket No. 27 at p. 14-16.

...Continued



1 treat each class of wildfire claimant separately.<sup>12</sup> The Superior Court of California appointed  
2 separate lead counsel for the Public Entities in that litigation<sup>13</sup> and required that each class of  
3 claimants (including the Public Entities) submit separate complaints to the Court.<sup>14</sup> The Superior  
4 Court of California recognized that the Public Entities, individual claimants, and the subrogation  
5 claimants each have separate interests and determined that it is appropriate to address each class  
6 of claims separately. Similarly, in the pre-petition wildfire litigation, the *Hon. Jay C. Gandhi*  
7 (*Ret.*) was appointed as mediator (the “**Public Entities Mediator**”) to deal solely with the Public  
8 Entities’ claims. The cost of the Public Entities Mediator has been paid, in part, by the Debtors.  
9 The mediation of the Public Entities’ claims has been conducted separate and apart from the  
10 mediation of the individual claimants’ claims and the subrogation claimants’ claims. Notably,  
11 the Debtors have attended several mediation sessions with the Public Entities after the Debtors’  
12 bankruptcy petition date, and the Public Entities Mediator has continued to serve in his role as  
13 the separate mediator for just the Public Entities’ claims. It is contemplated that the separate  
14 mediation of the Public Entities’ claims will continue, as will the Public Entities Mediator’s role  
15 therein.

16 The Public Entities have separate and distinct interests, different types of damages, and  
17 the bases of the PE Wildfire Claims differ from the general unsecured creditors and other tort  
18 claimants. In light of the discrete nature of the PE Wildfire Claims, there will likely be numerous  
19 issues and matters that arise during these bankruptcy proceedings where the interests of the  
20 Public Entities will diverge and are quite different from those of the general unsecured creditors  
21 or other tort claimants. Both the Debtors and the pre-petition litigation court have recognized the  
22 separate interests of Public Entities and have determined that it is appropriate to address the  
23

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24 <sup>12</sup> See Case Management Order No. 1, Coordination Proceeding Special Title [Rule 3.550] *California*  
25 *North Bay Fire Cases* attached as Exhibit D to the Esserman Declaration. The Superior Court of  
26 California separated wildfire claimants into the following categories: (1) the individual plaintiffs  
(individuals and businesses damaged by the fires), (2) the public entities, (3) class action plaintiffs, and  
(4) the insurer subrogation claimants.

27 <sup>13</sup> See *id.* at p. 6.

28 <sup>14</sup> See *id.* at p. 11.



Public Entities' claims separately. For the same reasons, a separate Public Entities Committee is proper in these proceedings.

**2. *The nature of these bankruptcy cases calls for a separate Public Entities Committee.***

In bankruptcy proceedings of this magnitude, it is not only common, but crucial to fair and orderly proceedings, to form multiple committees in order to ensure that discrete classes of claimants with substantial claims (here, the Public Entities have aggregate claims against the Debtors which could be in excess of \$2.5 billion) are provided adequate representation and recognition. As noted, the Trustee has already formed committees for unsecured creditors and for tort claimants.

Given the size of the Public Entities' claims, it is evident that the Debtors cannot have a meaningful reorganization without providing for a meaningful recovery by the Public Entities. It is not an option for the Debtors to simply allow the PE Wildfire Claims (which could be in excess of \$2.5 billion) to simply "pass through" the bankruptcy. Due to the public nature of the Public Entities claims, and the exigencies of the safety and welfare of thousands of citizens associated with those claims, a Public Entities Committee is necessary to provide a centralized point of contact for the Debtors when negotiating a viable plan of reorganization that adequately provides for the Public Entities and the communities for whom they are responsible.

Furthermore, the Debtors' reorganization plans contemplate negotiating with regulators and policymakers (*i.e.*, legislatures) to implement extraordinary measures to stabilize the Debtors' financial condition.<sup>15</sup> The Debtors will almost certainly request the support of the Public Entities on any attempts by the Debtors to obtain legislative or regulatory relief as part of the plan process. The Debtors could need the support of the Public Entities both for purposes

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<sup>15</sup> In the Debtors January 13, 2019 Form 8-K, the Debtors state that one consideration going into this bankruptcy was "the likelihood that regulators and policy makers were willing and able to timely implement extraordinary measures to stabilize PG&E's financial condition" and "the unique nature of California's doctrine of inverse condemnation and whether it is possible for PG&E to continue to own and operate all of its current assets as an investor-owned utility subject to that doctrine." (PG&E Jan. 12, 2019 Form 8-K). Similarly, the Debtors have indicated that one of its principal objects of this bankruptcy is to work collaboratively with State regulators and policy makers to address PG&E's liability and future operations.

of obtaining support for new legislation in the legislature and to obtain public support for any legislative measures pursued by the Debtors. It is incumbent upon each Public Entity to represent the interests of its community with respect to any position taken on new or existing legislation proposed or sought by the Debtors. Under no circumstances may the Public Entities have a position on legislative acts imposed on them merely because they were out-voted by UCC members or Tort Committee members representing the interests of individual claimants. Similarly, the Public Entities cannot be placed in a position where they are deemed (by UCC or Tort Committee action) to have approved or supported any position taken by the Debtors with respect to any regulatory commissions. For the Public Entities to consider any such measures by the Debtors, the Public Entities should act as a centralized and independent body. A Public Entities Committee will provide the needed centralization and independence.

**3. *The unique nature of the Public Entities' Wildfire Claims requires that they be represented by a separate, homogeneous committee.***

Creditors appointed to a committee hold a fiduciary duty to the respective constituencies represented by the applicable committee. While a typical tort claimant is interested primarily, if not solely, in recovering its individual financial damages, the Public Entities have broader concerns, including providing for the public safety and welfare of all of their citizens. Those concerns encompass not only adequate funding for rebuilding public works, but also consideration of the reorganized debtors' ability and willingness to provide services in a safe and responsible manner going forward.

The Public Entities cannot disregard or dilute the existing duties owed to their communities in order to act on behalf of a broader constituency of individual and business claimants whose interests may not always be aligned with those of the public welfare. Participation of the Public Entities on a committee comprised of anything but the Public Entities could present circumstances where the interests of the Public Entities' communities diverge from the interests of the committee's constituents. Where those interests cannot be reconciled, the Public Entities could be placed in a difficult situation.

1 The ability of the existing committees to function properly is a factor in the  
2 determination of whether a court should order the appointment of another committee. *See In re*  
3 *Dana Corp.*, 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006) (recognizing that “[t]he ability of an  
4 official committee to function is a significant factor in the determination of whether a court  
5 should order the appointment of another committee”). Here, any committee that will require  
6 the Public Entities to divide their duties among differing constituencies will be problematic  
7 from the outset. These bankruptcy proceedings require committee representation for the Public  
8 Entities. That representation must be in the form of a committee comprised solely of Public  
9 Entities.

10 **4. *A Public Entities Committee would perform tasks that the UCC and Tort***  
11 ***Committee will not fulfill.***

12 To the Public Entities, resolution of the Debtors’ liability for the wildfires is not simply  
13 an exercise of estimating aggregate damages and determining a fair allocation of the monies  
14 available to compensate victims. The Public Entities have the unique interest of also ensuring  
15 that the Debtors do not compromise future safety, reporting, operational or other matters in these  
16 bankruptcies in order to confirm a plan of reorganization. The Public Entities are charged with  
17 protecting the interests of all their existing and future citizens. They cannot sacrifice future  
18 concerns for other consideration. This interest in the future safety and welfare of the Public  
19 Entities’ communities can be juxtaposed to limited interests of other creditors in these  
20 bankruptcies who may be solely concerned with recovery of as much of their claims as possible.  
21 While a UCC or Tort Committee may take positions on issues without regard to the effect on the  
22 Debtors’ future operations and safety measures, the Public Entities cannot. A separate Public  
23 Entity Committee, therefore, can protect the interest of the future safety and welfare of the  
24 communities served by the Debtors in ways that a UCC or Tort Committee will not.

1           **5.       *Formation of a Public Entities Committee would not result in delay or***  
2           ***unreasonable additional costs.***

3           Formation of a Public Entities Committee will not result in any delay in the bankruptcy  
4 proceedings. These bankruptcy cases are approximately a month old, and the UCC and Tort  
5 Committees were formed less than two weeks ago. Furthermore, while “[t]he potential added  
6 cost is not sufficient in itself to deprive the creditors of the formation of an additional committee  
7 if one is otherwise appropriate,”<sup>16</sup> it is worth noting that a Public Entities Committee will likely  
8 not result in appreciable additional costs to the Debtors’ estates. Given the focus of the Public  
9 Entities, a Public Entities Committee may not need to engage investment bankers or accountants,  
10 if it could rely on the accountants engaged by the other official committees for information and  
11 analysis relevant to the Public Entities in some equal sharing arrangement. A Public Entities  
12 Committee could share certain professionals such as accountants, investment bankers and the  
13 like and need not engage separate professionals (except for lawyers) at this time, unless the  
14 Bankruptcy Court agrees to such relief.<sup>17</sup> Finally, the appointment of an Official Committee of  
15 Public Entities may very well expedite resolution of key issues in these bankruptcy cases, which  
16 would save considerable administrative costs for Debtors.

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26 <sup>16</sup> *In re Hills Stores, Co.*, 137 B.R. 4, 6 (Bankr. S.D.N.Y. 1992); *see also In re Budd*, 512 B.R. at 915.

27 <sup>17</sup> An Official Committee of Public Entities would only need to engage its own accountants or financial  
28 advisors in the event there is a dispute with the other committees or issues arise regarding the sharing of  
information among the committees, assuming equal sharing of and access to such professionals.

V.  
**CONCLUSION**

For the reasons set forth above, the Public Entities respectfully request that this Court enter an order, pursuant to 11 U.S.C. § 1102(a)(2) and/or § 105(a), directing the United States Trustee to promptly appoint an Official Committee of Public Entities consisting of the members of the Public Entities, and for such other and further relief as the Court deems appropriate.

Dated: March 1, 2019

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